Supreme Court, U.S.
FILED

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No. _____

In The Supreme Court of the United States

In Re: Samuel Bunyan Davis, Jr.

SAMUEL BUNYAN DAVIS, JR.,

Petitioner,

v.

ESTATE OF GLADYS LOUISE BARCLAY,

Respondent.

On Petition for an Extraordinary *Writ* of Prohibition to the Honorable James C. Godwin, Judge and the Honorable Rex A. Davis, Clerk

PETITION FOR *WRIT* OF PROHIBITION

Samuel B. Davis, Jr.
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65 pp

QUESTIONS PRESENTED

1. Is the practice in Virginia of designating retired judges to hear cases a violation of Petitioner's right of due process under the Fifth Amendment to the Constitution of the United States and the right of due process and equal protection of the law under the Fourteenth Amendment thereto because retired judges are not subject to reappointment by the legislature, are not subject to discipline by the Judicial Inquiry and Review Commission, and holding no office are not subject to removal or impeachment?

2. Is an order entered after the expiration of twenty-one days after the entry of the final decree of divorce (Exhibit No. 1) in violation of Rule 1.1 of the Supreme Court of Virginia (Exhibit No. 2) without reinstatement of the case upon the docket of the court under Code of Virginia Section 8.01-428 (Exhibit No. 3) or any other provision of law for reinstatement of a case upon the docket void as a violation of Petitioner's right to due process under the Fifth and Fourteenth Amendments to the Constitution of the United States?

PARTIES TO THE PROCEEDING

PETITIONER

Samuel Bunyan Davis, Jr.

RESPONDENT

Estate of Gladys Louise Barclay
Successor in interest to Louise Barclay Davis

James C. Godwin, retired Judge of the
Fifth Judicial Circuit of Virginia

Rex A. Davis, Clerk of the Circuit
Court of the City of Newport News

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JURISDICTION

This case comes to the Supreme Court of the United States upon a petition for an extraordinary writ of prohibition upor an order of the Supreme Court of Virginia dated July 12, 2001 (Exhibit No. 4) designating retired Judge James C. Godwin substitute to hear a motion for reinstatement filed by Petitioner and a motion for relief (Exhibit No. 5) filed by Respondent.

STATEMENT OF THE CASE

This is a divorce case in which there are two incontrovertible facts:

1. The Bill of Complaint was filed in the Circuit Court for the City of Newport News on July 25, 1995, and

2. There was no service of process by personal, posting or publication until May 7, 1996.

And yet, during that time Judge Robert P. Frank held a hearing and entered an order, a five unit police raid was staged to enforce that order, and the Supreme Court of Virginia appointed retired Judge James C. Godwin substitute.

Petitioner and Respondent were married on September 22, 1956. They had no children. They lived together until the early morning of June 22, 1995 when Respondent called 911 to have police come to the marital residence and detain Petitioner until an Evaluator from Contact could come and evaluate Petitioner for

commitment. The police came, decided that Petitioner was no danger to himself or Respondent and refused to stay until the Contact office opened at 8:00 a.m. Respondent then decided to leave the marital residence. The police remained until Respondent's sister Leila Barclay Hine arrived to take her away.

Respondent took up residence at Riverside Convalescent Center in Smithfield, Virginia. The divorce suit was filed on July 25, 1995. Petitioner is an attorney, having been admitted to the bar in 1952. There was no service of process, Respondent's attorney Kenneth B. Murov of the law firm of Jones, Blechman, Woltz & Kelly, P.C. knowing that Petitioner would vigorously contest it. Notwithstanding the lack of service Murov scheduled and held a *pendente lite* hearing before Judge Robert P. Frank on November 2, 1995. No order was entered at the conclusion of the hearing. On November 7, 1995 Judge Frank wrote the Supreme Court of Virginia requesting the appointment of a substitute judge as all judges of the circuit had recused themselves. The order on the hearing was entered on November 17, 1995 (Exhibit No. 6). Handwritten on the order was "serve 40 Barclay Rd" an asterisk and at the bottom "the Defendant was not present but was duly notified". A reasonable explanation for holding the hearing without proof of service in the file would be that Judge Frank was persuaded to continue upon assurances by Murov that Petitioner had been served with the Bill of Complaint and that proof of service would be filed. When he was unable to furnish proof of service the most charitable explanation is that he prevailed upon a compassionate judge to give the marital residence to a severely disabled 63 year old woman who was wrongfully evicted by a deranged husband.

On Friday December 8, 1995 at 4:38 p.m. Respondent again called 911. Petitioner brings to the attention of this Court the fact that in Virginia upon a detention for suspicion of being mentally ill a person may be held for 72 hours without counsel before being afforded a hearing by a magistrate. He is required to submit to any medication ordered by a physician. Magistrates do not hold hearings on Saturdays or Sundays. If Petitioner could be detained for evaluation on Friday afternoon he could have been held incommunicado until the following Thursday morning.

Five police units responded to the 911 call (Exhibit No.7). Petitioner responded to a very loud knock on a solid oak door by a Colonial Williamsburg "S" knocker by putting on his shoes and asking through the door who it was. The reply was "Police". Petitioner asked through the door "Do you have a warrant?". The reply was "We have a court order". Petitioner did not respond. An officer said "Mr. Davis, you might as well open the door. We have a key". With that Petitioner cracked open the door several inches. Two officers rushed the door, throwing Petitioner into the hall wall. Frantic, Petitioner ran to his bedroom with the officers close behind. Petitioner was roughly grabbed by the officers, one on each arm. Petitioner said he was going to get a handkerchief and the officers relaxed their grip. Petitioner then went to the living room, got his keys, wallet and a leather jacket and tried to leave. Two other officers were blocking the fromt door. Petitioner had to fight his way between them to get out. As Petitioner was leaving in his car an officer called out from inside the house "Mr. Davis...come back...come back". Petitioner had to drive over the lawn to get around the police cars.

BEST AVAILABLE COPY

On December 22, 1995 the Supreme Court of Virginia appointed retired Judge James C. Godwin of Suffolk to hear the case.

No attempt at service of the Bill of Complaint was made until May 7, 1996 when Ned Massey III posted the Bill of Complaint and video-taped Petitioner removing it from the door (Exhibit No. 8).

Judge Godwin appointed E. Thomas Cox Commissioner in Chancery to hear evidence and report his findings and recommendations to the Court. A transcript was taken of his hearing and is all of the evidence available to him in making his report. He made no independent inquiry or investigation. Based on his report Judge Godwin entered the FINAL DECREE OF DIVORCE (Exhibit No. 1). on April 10, 1997 over the objection of Petitioner.

Because this final decree disposes of two parcels of real estate, one titled "S. B. Davis, Jr. and Louise B. Davis, Trustees of Virginia Real Estate Trust" and the other "Virginia Real Estate Trust" it is necessary to examine the trust and Respondent's role in its' creation and administration.

Respondent was the consummate professional. She worked for such luminaries as lawyers Bill Allaun, Fred Bateman before he became judge, Dick Newman; Warwick City Manager J. Clyde Morris, who picked her up every morning for work. More important she worked directly for both Frank Blechman and Arthur Woltz of lawyer Kenneth Murov's firm Jones, Blechman, Woltz & Kelly P.C. In addition, she worked for Tom Downing who became Of Counsel with the firm when he retired as Congressman from the First District. She was a licensed real estate broker.

After marriage Respondent worked for Petitioner in his law practice, which was primarily real estate. Petitioner assembled groups of nine investors and with himself formed five corporations which bought second mortgages at discount from builders who had taken them as down payment. The Treasury Department recognized a business entity known as a Real Estate Investment Trust (REIT) with the key provision that income, to the extent that it was distributed to shareholders was not taxable. Virginia trust law was changed to recognize this entity.

Petitioner and Respondent formed Virginia Real Estate Trust with themselves as trustees by filing a Declaration of Trust in Clerk's Offices where real estate might be involved. The tax code required 100 shareholders. Petitioner began selling shares at $100 each, limiting each shareholder to one share. Ownership of the trust was evidenced by "Certificates of Interest" and was regarded in the nature of a partnership not requiring registration under the Blue Sky Law. When 100 shareholders were signed up the five corporations were dissolved and shares of Virginia Real Estate Trust issued. The corporations had used borrowed money by pledging assets with personal endorsements of shareholders. Petitioner and Respondent consolidated all of these loans and personally endorsed the note of Virginia Real Estate Trust.

Expansion of the trust was accomplished by the issuance of warrants to shareholders in proportion to their holdings. The trust finally settled into operation with 3,460 shares outstanding. Interest rates were low. Passbook rates were 4.00 per cent. Virginia limited rates to 6.00 percent. Petitioner and Respondent were paying their investors (and receiving on their own investment) 11.00 and 12.00 per

cent annually. Rates began to rise. Virginia removed its' rate limit on first lien real estate loans. Petitioner then started making wraparound (sometimes called all-inclusive) loans. Rates continued to rise. In August 1981 the rate on bellwether 30 year Treasury Bonds was 14%; New York City prime rate was 22%.

The bank loan was on a month to month renewal and the rate had been continually increased until it reached 17%. Petitioner and Respondent changed banks and reversed the arrangement. They established a personal line of credit loan with Old Point National Bank of Phoebus in the amount of $250,000 and had Virginia Real Estate Trust endorse the note and pledge its' notes as collateral. They then proceeded to redeem as many shares as possible at the par value of $100. Despite never missing an interest payment or being late the bank called the loan. With money obtained from his aunt, Louise D. Haynes, Petitioner paid off the loan on June 12, 1992 in the amount of $189,873.36. Of the 3,460 shares outstanding they had redeemed all but 1,050 when Respondent dialed 911 on June 22, 1995.

An appeal of right of the April 10, 1997 final decree was made to the Court of Appeals of Virginia. A Memomandorum (sic) of Lis Pendens was filed on the marital residence. Respondent died on November 14, 1997. Kenneth B. Murov and John W. Churchill qualified as Co-Administrators of her estate. Notwithstanding the Lis Pendens the marital residence was sold by Respondent's three sisters and three nieces.

On September 10, 1998 Petitioner was taken to the hospital after lying unconscious on his bedroom floor for five days. A neighbor saw a newspaper on the top of Petitioner's car in the driveway, investigated, saw four

more on the ground and called 911. Petitioner received extensive surgery and remained in the Intensive Care Unit until 4:30 p.m. on September 18, 1998. At 5:05 p.m. on that date Petitioner was served with Notice and Motion for Relief by Ned Massey in Room 439 (Exhibit No. 9).

This Motion for Relief was to get $8,710.83 held by the Clerk of the Circuit Court of the City of Hampton as the pay-off on the loan of Myrtle Gwaltney held by Virginia Real Estate Trust. Petitioner filed a Motion to Quash which included a plea for continuance based on his hospitalization. Judge Godwin rejected this motion, writing across the bottom "Filed 10/5/98 No appearance no Drs certificate nothing to cause continuance other than mere allegation" (Exhibit No.10).

The hearing was held as scheduled. Judge Godwin entered an order awarding the entire Gwaltney pay-off to Murov and Churchill as Co-Administrators of Respondent's estate (Exhibit No. 11).

A divorce case may be reinstated for changes in custody and support. A divorce case may be reinstated for the administration of Equitable Distribution when it is bifurcated and reserved in the final decree. Dormant cases are removed from the docket and may be reinstated. All other cases must be reinstated under Code of Virginia Section 8.01-428 (Exhibit No. 3) the only applicable part being fraud. All reinstatements have three things in common: (1) there must be a motion for reinstatement (2) notice must be given to the opposite party and (3) a fee must be paid to the Clerk of Court. There is no motion for reinstatement in the file. No notice was given to Petitioner. A fee was paid to the Clerk on January 26, 1999 for the October 5, 1998 hearing (Exhibit No. 12).

There are three orders reinstating this case on the docket. The first two consist of two pages, the only entry on page two being "I ask for this:" and the signature "K B Murov". The signatures on page two are identical when superimposed. Number one is dated October 5, 1998 and bears the handwritten notation "Original mailed to Judge Godwin 9-29-98. Number two is dated October 26, 1998. Number three is identical in text with the first two, but has "I ask for this:" the name and address of Kenneth B. Murov and Jones, Blechman, Woltz & Kelly, P.C. on the only page. It is dated March 24, 1999. This was entered pursuant to Murov's letter to Clerk of Court Rex Davis dated January 26, 1999 (Exhibit No. 12).

Petitioner remained hospitalized until his discharge on December 26, 1998. Petitioner asked to be sent to Patrick Henry Hospital , a nursing facility owned and operated by Riverside Regional Medical Center. He was refused because his income would not cover payments after the 30 days paid for by Medicare expired. Petitioner offered to make an assignment of his interest in $96,959.17 held by the Clerk of the Circuit Court for the City of Newport News in the suit of Simmons v. Davis Chancery No. 19129-RW, but was still refused. General Counsel for Riverside Regional is Herbert V. Kelly, Sr., senior partner in Jones, Blechman, Woltz & Kelly P.C. He also sits on the Board of Directors. Petitioner had previously thwarted Kelly's attempt to sell the hospital to Columbia/HCA Healthcare.

After selling all of the real estate, getting the Myrtle Gwaltney Virginia Real Estate Trust pay-off and cashing the bearer bonds Murov turned his attention to the Simmons suit funds, which had been held by the Clerk for nine years in a non interest bearing account. This was started by scheduling two hearings for December 3, 1999. The first

was before the Honorable Randolph T. West in the case of McKinley Simmons v. S. B. Davis, Jr. Chancery No. 19129-RW at 1:00 p.m. The second was before the Honorable James C. Godwin in Estate of Gladys Louise Barclay, Successor in interest to Louise Barclay Davis v. Samuel Bunyan Davis, Jr. Chancery No. 27095 at 2:00 p.m.

Because the final decree is silent on the Simmons money despite being apprised of it in an answer to a subpoena duces tecum, an objection to the Commissioner's report and an objection to entry of the final decree, it is necessary to explain its' origin and history.

Under his law license Petitioner began making construction loans to small builders unable to get financing from banks. To minimize the risk, the builder was given no money, Petitioner buying the lot and paying materialmen and subcontractors. Petitioner did not represent these builders. Disbursement were made on a "Check Request" form signed by the builder's attorney.

Respondent was an intregral participant in this process, to the extent of wearing a hard hat and making progress inspections for the Friday construction loan draws. She weathered such harassment as having a worker on a roof drop a piece of scrap lumber behind her as she made one such inspection and the laughter that followed her reaction. Respondent was responsible for verifying that plumbers and electricians were the ones that got the permit for that job, a measure necessary to prevent the diversion of funds from one job to another. She also verified that subcontractors, such as drywall and landscaping had business licenses. Petitioner and Respondent together met on site with payment in certified funds for delivery and erection of manufactured housing. This caution was

necessary as courts across the country were increasingly including lenders in the process and making them responsible to subcontractors and particularly to workers injured on the job, regardless of who they worked for. Petitioner made some subcontractors show proof of workman's compensation insurance.

Simmons was married and separated from his wife. His wife would have to sign all conveyances of real property. Petitioner established a land trust for him and all real property was titled "S. B. Davis, Jr. Trustee of Simmons Land Trust". Simmons was a minority contractor and as such was given preference in the purchase of lots from Newport News Redevelopment and Housing Authority. Petitioner bought 644 27th Street, Newport News, Virginia for Simmons. Lots are not sold for speculative building. Simmons represented to Petitioner that he was building for investment and presented a commitment from Atlantic Permanent Savings and Loan Association for a permanent take-out loan. In fact, through a local realtor, a building deal had been sold to a young black couple, Jerome L. and Wanda L. Gillis, who had pre-qualified for their loan. The house was three weeks from completion. The Gillises had sold their home and were living in a motel with their infant child. The proceeds of the sale were to be paid to Petitioner. The real estate company tried to persuade Petitioner to allow the proceeds to be paid to Simmons. Petitioner refused. Simmons abandoned the job. The sale collapsed. The property was quickly vandalized and taken over by drug addicts.

Petitioner still held title to two lots and one completed house. Petitioner also was also trustee in a deed of trust given to Simmons in a previous sale and held the note as collateral. The note was in default. Simmons demanded Petitioner foreclose and when Petitioner refused

brought the suit in question. Petitioner filed a cross claim. The case was referred to Commissioner in Chancery Clyde M. Weaver who held a hearing. After the hearing Petitioner located the Gillises through the deed book in the Hampton Circuit Court. On Saturday, November 3, 1990 talked with them and found out that their real estate company had referred them to a lawyer for free advice on whether or not to sue Simmons. That lawyer was Clyde M. Weaver.

On Sunday, November 4, 1990 Petitioner typed a three page ethical complaint to the Virginia State Bar against Clyde Weaver. The Virginia State Bar dismissed the complaint saying it was a quasi-judicial act and they had no jurisdiction. Petitioner then filed a complaint with the Judicial Inquiry and Review Commission which also dismissed. A complete copy of both of these complaints was published in ***The Daily Report*** on May 10, 1996. The completed house was sold and the note foreclosed producing $96,959.17 which has been held by Clerk of Court Rex A. Davis for nine years in a non-interest bearing account. The $22,039.78 sought by the Motion for Relief which is the subject of this petition is the result of a judgment entered by Judge Randolph T. West at the December 3, 1999 hearing.

Petitioner filed suit for violation of RICO and the Civil Rights Act in the United States District Court for the Eastern District of Virginia against Richard Hudgins, McKinley Simmons, Howard D. Andleton, James M. Dixon, Timothy L. Dalton, James S. Ellenson, Clyde M. Weaver, Lawrence J. Redding, Jr., Robert D. Hicks Randell C. Ogg and J. W. Hornsby, Jr. The District Court dismissed. Appeal was taken to the Fourth Circuit Court of Appeals which also dismissed. A petition for a writ of

certiorari was filed with the Supreme Court of the United States which was denied. Petitioner filed a motion for rehearing. The judges of the District Court en banc fined Petitioner $500 for filing a frivolous suit.

Petitioner filed a six paragraph Petition for a Writ of Prohibition against the December 3, 1999 hearing with the Virginia Supreme Court in which he (1) quoted the dismissal from the docket in the Final Decree of Divorce (2) repeated plaintiff's allegation that he concealed the Simmons money (3) summarized and attached copy of answer to subpoena duces; summarized and attached objection to Commissioner's report (4) quoted Virginia Supreme Court Rule 1.1 (21 day rule) (5) cited fraud under Virginia Code Section 8.01-428 as the only cause for reopening a case and (6) stated that a copy was being sent to the Supreme Court of the United States as an exhibit to a pending application for a Writ of Certiorari. This petition was served personally on Judge Godwin in his dining room on Longreen Lane in Suffolk by Patricia Fromal, who was led there by the buyer of 708 North Broad Street, the address Judge Godwin maintained at the Virginia State Bar. It was was sent to the Virginia Supreme Court by Express U. S. Mail on Tuesday, November 30, 1999. Copies were mailed to Kenneth B. Murov and Clerk of Court Rex A. Davis. Weeks later the signature page was returned for a notary. (Exhibit No. 13)

On Friday, December 3, 1999 Petitioner delivered a Motion to Clerk of Court Rex A. Davis asking him to stop Judge Godwin from holding court in his courtroom as his appointment expired when he entered the final decree. Petitioned delivered a Motion to Judge Godwin asking him to disqualify himself for the same reason. Both hearings were held as scheduled. The hearings were taken down by a Court Reporter.

Having failed to stop the hearing Petitioner filed a six paragraph Petition for a Writ of Prohibition against the entry of an order based on the hearing in which he (1) quoted the dismissal from the docket in the Final Decree of Divorce (2) quoted Virginia Supreme Court Rule 1.1 (21 day rule) (3) cited fraud under Virginia Code Section 8.01-428 as the only cause for reopening a case (4) cited and attached copy of motion to Clerk of Court Rex Davis to stop Judge Godwin from using his courtroom on the grounds that his appointment had expired (5) cited and attached copy of motion to Judge Godwin asking him not to hold hearing on grounds that his appointment had expired and (6) stated that a copy was being sent to the Supreme Court of the United States as an exhibit to a pending application for a Writ of Certiorari. This petition, with exhibits and sworn proof of service on January 5, 2000 by posting on Judge James C. Godwin's front door were sent to the Virginia Supreme Court by regular U. S. Mail on January 5, 2000. Copies were mailed to Kenneth B. Murov and Clerk of Court Rex A. Davis Exhibit No. 14)

There is an order in this case (Exhibit No. 15) dated January 6, 2000 signed by Judge Godwin. Judge Godwin lives in Suffolk. There is no letter in the file from Clerk of Court Rex Davis to Judge Godwin submitting it for his signature. There is no letter in the file from Judge Godwin to Clerk Davis submitting the order for entry. The order does not bear the clerk's time stamp showing date and time of receipt.

On February 3, 2000 Petitioner posted a $500 cash bond and perfected an appeal of right to this second final order to the Court of Appeals of Virginia. Upon returning home after filing the appeal Petitioner found in his mail a check from Clerk of Court Rex Davis for $48,479.58. The

Court of Appeals of Virginia affirmed and dismissed the appeal. A Petition for Appeal was filed with the Supreme Court of Virginia. By order dated March 5, 2001 the Supreme Court dismissed stating in its' entirety:

> Finding that the petition for appeal does not contain a statement setting forth in what respect the decision of the Court of Appeals involves (1) a substantial constitutional question as a determinative issue, or (2) matters of signaf.cant precedential value, the Court dismisses said petition filed in the above-styled case. Rule 5:17 (c).

This order is the subject of a petition for a writ of certiorari now pending in the Supreme Court of the United States docketed as No. 00-1823. (Exhibit No. 16)

On the afternoo of July 18, 2001 Petitioner received in his mail a letter dated July 15, 2001 from Rex A. Davis, Clerk of the Circuit Court of Newport News stating that the Virginia Supreme Court had on July 12, 2001 appointed retired Judge James C. Godwin substitute judge and he had forwarded Petitioner's motion for reinstatement and Respondent's motion for relief to him. Petitioner immediately hand carried a letter to him asking for (1) a copy of a letter from the chief judge stating that all judges of the circuit had recused themselves (2) a copy of his order of appointment and (3) a copy of the letter of transmittal from the Supreme Court. A deputy provided the order but said there was nothing showing that all judges had recused themselves (Exhibit No. 17).

REASONS FOR GRANTING THE PETITION

In Virginia Circuit Judges are appointed for a term of eight years. They must be reappointed at the end of each term. The sole discipline of Circuit Judges lies with the Supreme Court of Virginia. Complaints against judges are referred to the Judicial Inquiry and Review Commission. This is an advisory body which can only submit its findings and recommendations to the Supreme Court. A retired judge is not subject to reappointment. The only protection the public has from a corrupt retired lies with the Chief Justice of the Supreme Court of Virginia, currently Harry L. Carrico. Retired judges are used to do the judicial dirty work. They are appointed to hear impeachment of local officials. They preside over cases where police officers are charged with using excessive force. A litigant does not get the same quality of justice from a retired judge as he does from a sitting judge who is subject to forced retirement, censure or removal or not being reappointed. They are paid $400 per day for presiding over cases. They know what they are supposed to do and they do it. If they don't, they don't get appointed. The Chief Justice has the sole discretion. The controlling statute states:

> 17.1-105. Designation of judges to hold courts and assist other judges.
>
> B. If all the judges of any court of record are so situated in respect to any case, civil or criminal, pending in their court as to render it improper, in their opinion, for them to preside at the trial, unless the cause or proceeding ir re-

> moved, as provided by law, they shall enter the fact of record and the clerk of the court shall at once certify the same to the Chief Justice of the Supreme Court, who shall designate a judge of some other court of record or a retired judge of any such court to preside at the trial of such case.

Petitioner says that the use of retired judges violates his right of due process under the Fifth Amendment to the Constitution of the United States and his right of due process and equal protection of the law under the Fourteenth Amendment thereto. Petitioner further states that it is a matter of record that the Chief Justice did not comply with the statute in that there is no recorded recusal by the five judges of the Seventh Judicial Circuit.

Petitioner asks the Court to vacate all orders and decrees entered after the expiration of twenty-one days after entry of the final decree. The very first rule of court (Exhibit No. 2)states:

> Rule 1.1. Finality of Judgments, Orders and Decrees.
>
> All final judgments, Orders and Decrees, irrespective of terms of court shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry and no longer.

The twenty-one day rule is the most basic, and because of its application to death penalty cases the most controversial in Virginia law. The rule clearly bars further litigation. Hayes v. Hayes, 3 Va. App 499, 351 S.E. 2d 590 (1986).

Matters of custody and support and maintenance may be revisited without reinstating the case on the docket. This is not applicable to this case.

Under Code of virginia Section 20.107-3 Respondent could have moved the court to bifurcate Equitable Distribution and retain jurisdiction after entry of the final decree. Because this was not done further assertion of those rights is barred. Toomey v. Toomey, 251 Va. 168, 465 S.E. 2d 838 (1996).

Reinstatement of all other cases must fall under one of the four provisions of Code of Virginia Section 8.01-428 (Exhibit No. 3) which provides for correcting errors due to (A) default judgments (B) Clerical errors (C) Failure to notify party of entry of final decree and (D(fraud.Thus the only way this case could be reopened would be to show that the Petitioner was guilty of fraud.

Petitioner finds no statutory requirements for reinstating a case upon the docket. One guideline is the reinstatement of cases removed from the docket when no orders or proceedings have occurred over a period of time. Such reinstatement requires notice to the opposite party. It also requires the payment of fees. In this case there were no motions for reinstatement, no notice to petitioner and no payment of fees until after the order had been entered (Exhibit No. 12).

CONCLUSION

Petitioner asks this Court to issue an injunction directed to Judge James C. Godwin and Clerk Rex A. Davis prohibiting them from holding court on this matter

on the grounds that a retired judge does not provide due process and equal protection of the law or that the appointment of Judge Godwin does not comply with the statute and is void.

Petitioner further asks the Court to vacate all orders and decrees entered after the expiration of twenty-one days after entry of the final decree on the grounds that the case was not properly reinstated before entry of the orders and decrees.

Respectfully submitted,

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In The Supreme Court of the United States

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SAMUEL BUNYAN DAVIS, JR.,

Petitioner,

v.

ESTATE OF GLADYS LOUISE BARCLAY,

Respondent.

On Petition for an Extraordinary *Writ* of Prohibition to the Honorable James C. Godwin, Judge and the Honorable Rex A. Davis, Clerk

APPENDIX

Samuel B. Davis, Jr.
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APPENDIX

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VIRGINIA: IN THE CIRCUIT COURT
FOR THE CITY OF NEWPORT NEWS

LOUISE BARCLAY DAVIS
Plaintiff

v.

SAMUEL BUNYAN DAVIS, JR.
Defendant

FINAL DECREE OF DIVORCE

This cause came on this day to be heard upon plaintiff's bill of complaint; proper and legal service of defendant; the testimony of witnesses taken on behalf of plaintiff before E. Thomas Cox, Commissioner in Chancery, after proper notice to defendant; the report of the Commissioner in Chancery filed with the court; exceptions filed by defendant; and was argued by counsel for plaintiff and defendant.

UPON CONSIDERATION WHEREOF, it appearing to the Court independently of the admissions of either party in the pleadings or otherwise, that plaintiff and defendant were lawfully married in Newport News, Virginia on September 22, 1956, that both of the parties are of sound mind, over the age of eighteen years and neither of the parties is currently a member of the Armed Forces of the United States on active duty, that plaintiff was and had been an actual bona fide resident and domiciliary of the Commonwsealth of Virginia for more than six months immediately preceding the commencement of this suit on

Exhibit No. 1

August 11, 1995; that at the time of the institution of this suit plaintiff resided in Newport News, Virginia and defendant resided in Newport News, Virginia; that the parties last cohabited as husband and wife in the City of Newport News, Virginia; that there were no children born of the marriage; that the parties separated on June 22, 1995, which separation has been continuous, without interruption and without cohabitation since that time, a period of time in excess of one year; that there is no probability of a reconcilation between the parties; and that the plaintiff is entitled to the relief prayed for.

It is, accordingly, ADJUDGED, ORDERED and DECREED that the report of E. Thomas Cox, Commissioner in Chancery, be and it is hereby approved, ratified and confirmed in all respects; and it is further

ADJUDGED, ORDERED and DECREED that defendant's exceptions to the Commissioner's Report filed herein are hereby overruled, and it is further

ADJUDGED, ORDERED and DECREED THAT plaintiff LOUISE BARCLAY DAVIS hereby is granted a divorce from the bonds of matrimony from defendant SAMUEL BUNYAN DAVIS, JR. on the ground that the parties have lived separate and apart, without cohabitation and without interruption, for a period of time in excess of one (1) year; and it is further

ADJUDGED, ORDERED and DECRFEED that Defendant shall pay to Plaintiff spousal support in accordance with the court's order of June 17, 1996 in the amount of SIX HUNDRED DOLLARS ($600.00) per month, commencing May 10, 1996 and continuing on the 10th day of each month thereafter until her death,

remasrriage or further Order of the Court, whichever first occurs; and it is further

ADJUDGED, ORDERED and DECREED that Kenneth B. Murov be appointed Special Commissioner and/or Trustee to convey all right, title and interest in the marital home located at 40 Barclay Road, Newport News, Virginia from Plaintiff and Defendant to Plaintiff; and it is further

ADJUDGED, ORDERED and DECREED that Kenneth B. Murov be appointed Special Commissioner and/or Trustee to convey all right, title and interest in the real estate located at 437 Winterhaven Drive, Newport News, Virginia from Plaintiff and Defendant to Defendant; and it is further

ADJUDGED, ORDERED and DECREED that Kenneth B. Murov be appointed Special Commissioner and/or Trustee to sell and transfer ownership of the real estate located at 628 Lee Street, Hampton, Virginia, 515 Homestead Avenue, Hampton, Virginia and 10368 Warwick Boulevard, Newport News, Virginia. Upon the sale of the properties listed above, the net proceeds shall be equally divided between Plaintiff and Defendant after payment of tax liens and all expenses of sale; and it is further

ADJUDGED, ORDERED and DECREED that the **(three bonds) face** **Dollars plus interest** bearer bonds in the amout of **Fifteen thousand & xx/100** shall be cashed and the net proceeds split equally between Plaintiff and Defendant, but Defendant's share shall be reduced by all unpaid spousal support in arrears and all

expenses and fees to which Plaintiff is entitled in this cause; and it is further

ADJUDGED, ORDERED and DECREED that Plaintiff and Defendant comply with the provisions set forth hereinbelow pursuant to Section 20-60.3, Code of Virginia (1950), as amended, and notice is given that

1. Any support payments may be witheld as they become due pursuant to Section 20.79.1 or Section 20.79.2 from earnings as defined in Section 63.1-250 without further amendments of this order or having to file an application for services with the Department of Social Services; however, absence of such notice in an Order entered prior to uly 1, 1988, shall not bar withholding of support payments pursuant to Section 20.79.1: that plaintiff be allowed to resume her maiden name of GLADYS LOUISE BARCLAY.

Nothing further remaining to be done in this matter, it is ORDERED stricken from the docket and filed among the ended causes.

ENTERED this 10th day of April, 1997.

/s/ James C. Godwin
Judge

I ask for this:

/s/ Kenneth P. Murov p.q.
Kenneth B. Murov

Have Seen:

No appearance by Defendant
(unrepresented _____ p.d. **4/10/97**
Samuel Bunyan Davis, Jr.

VIRGINIA RULES ANNOTATED

Rule 1.1. Finality of Judgments, Orders and Decrees.

All judgments, orders, and decrees, irresoective of terms of court, shall remain under control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry and no longer. But notwithstanding the finality of the judgment, in a criminal case the trial court may postpone execution of the sentence in order to give the accused an opportunity to apply for a writ of error and supersedeas; such postponement, however, shall not extend the time limits herinafter prescribed for applying for a writ of error. The date of entry of any final judgment, order, or decree shall be the date the judgment, order, or decree is signed by the judge.

Exhibit No. 2

CODE OF VIRGINIA
TITLE 8.01. CIVIL REMEDIES AND PROCEDURE

8.01-428. Setting aside default judgments; clerical mistakes; independent actions to relieve party from judgment or proceedings; grounds and time limitation.

A. Default judgments and decrees pro confesso; summary procedure. --Upon motion of the plaintiff or judgment debtor and after reasonable notice to the opposite party, his attorney of record or other agent, the court may set aside a judgment by default or a decree pro confesso upon the following grounds; (i) fraud on the court, (ii) a void judgment, (iii) on proof of an accord and satisfaction. Such motion on the ground of fraud on the court shall be made within two years from the date of the judgment or decree.

B. Clerical mistakes. --Clerical mistakes in all judgments or other parts of the record and errors therein arising from the oversight of or from an inadvertent omission may be corrected by the court at any time on its own initiative or upon the motion of any party and after such notice, as the court may order. During the pendency of an appeal, such mistakes may be corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending such mistakes may be corrected with leav of the appellate court.

C. Failure to notify party or counsel of final order. --If counsel, or a party not represented by counsel, who is not in default in a circuit court is satisfied that such lack of notice (i) did not result from a failure to exercize due diligence on the part of that party and (ii) denied that party

Exhibit No. 3

an opportunity to file an appeal therefrom, the circuit court may, within sixty days of the entry of such order, grant the party leave to appeal. The computation of time for noting and perfecting an appeal shall run from the entry of such order, and such order shall have no other effect.

D. Other judgments or proceedings. --This section does not lime the power of the court to entertain at any time an independent action to relieve a party from any judgment or proceeding, or to grant relief to a defendant not served with process as provided in 8.01-322, or to set aside a judgment or decree for fraud upon the court.

Supreme Court of Virginia

To All To Whom These Presents Shall Come - Greetings:

Know Ye, That I, Harry L. Carrico

Justice of the Supreme Court of Virginia, by virtue of the authority vested in me by law, do hereby designate

HONORABLE JAMES C. GODWIN, RETIRED JUDGE OF THE FIFTH JUDICIAL CIRCUIT TO PRESIDE IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

In the case of
Louise Barclay Davis
v.
Samuel Bunyan Davis, Jr.
Chancery Number 27095

To be heard on a date set by the Judge, and continuing until the matters presented to him in this case have been disposed of according to law.

In the place of
THE JUDGES OF THE SEVENTH JUDICIAL CIRCUIT
who are so situated as to render it improper, in their opinion for them to preside at the trial of said case.

Given under my hand and seal this 12th day of July @001.

Harry L. Carrico
Chief Justice of the Supreme Court of Virginia

Exhibit No. 4

VIRGINIA: IN THE CIRCUIT COURT
FOR THE CITY OF NEWPORT NEWS

ESTATE OF GLADYS LOUISE BARCLAY,
Successor in interest to Louise Barclay Davis
Plaintiff

v.

SAMUEL BUNYAN DAVIS, JR.,
Defendant

MOTION FOR RELIEF

The undersigned, by counsel moves for the following relief for the reasons set forth hereinbelow:

1. An award of attorney fees and costs incurred by Plaintiff in her defense of the appeal by Defendant in this cause that was determined to be without merit (See September 5, 2000 decision of the Virginia Court of Appeals, Recorc No. 0271-00-1, which is attached hereto as Exhibit A. Plaintiff has incurred attorney fees and costs in the amount of $4,380.00 to defend the appeal (See attached Exhibit B) plus the expense of preparing this notice and motion for relief and appearing in court.

2. That Plaintiff and Defendant were divorced by this Court on April 10, 1997.

3. That the report of Commissioner E. Thomas Cox was filed with this Court on January 24, 1997 and was adopted, ratified and confirmed in the final decree.

Exhibit No. 5

4. That since the entry of the final decree of divorce, specifically, in April, 2001, counsel for Plaintifff has determined that there is $22,039.78 being held by the Clerk of this Court in Ch # 19129-RW, and that the aforesaid money represents an asset that existed prior to the separation of Plaintiff and Defendant on June 22, 1995. This is a different sum of money from the $96,000.00 previously heard by the Court in Chancery No. 19129-RW.

5. Defendant did not disclose the existence of this money or the lawsuit in his discovery responses in the divorce proceedings notwithstanding discovery served on him on January 4, 1996 and notwithstanding his opportunity to appear at the Commissioner's hearing on December 16, 1996 and the hearing to enter the final decree in this cause on April 10, 1997. Defendant failed to appear at both of these hearings.

6. Virginia law requires that the $22,039.78 be classified as marital property and equitably divided as contemplated by the Commissioner's report and Virginia Code Section 20-107.3. Plaintiff also received 50% of the marital assets in the divorce proceedings.

WHEREFORE, Plaintiff prays for the following relief:

A. That she be awarded attorney fees and costs for the appeal without merit in the Virginia Court of Appeals;

B. That the Court classify the $22,039.78 being held by the Clerk of this Court in Chancery No. 19129-RW as marital property and divide it equally,

C. That an injunction be entered withholding disbursement of aforesaid money until the Court hears and decides this matter.

D. That she be granted such other relief as this cause requires.

Estate of Gladys Louise Barclay

By: /s/ K B Murov
Of Counsel

Kenneth B. Murov, Esq.
690 J. Clyde Morris Boulevard
Suite D
Newport News, VA 23601
757-595-2100
757-595-7199 (fax)

VIRGINIA: IN THE CIRCUIT COURT

FOR THE CITY OF NEWPORT NEWS

LOUISE BARCLAY DAVIS
Plaintiff

v. CHANCERY NUMBER 27095-RF

SAMUEL BUNYAN DAVIS, JR.
Defendant

Serve 40 Barclay Road
Newport News, Va 23606

ORDER

This cause came the 2nd day of November 1996, upon notice of pendente lite relief by plaintiff, plaintiff present and represented by counsel, * the evidence heard ore tenus, and was argued by counsel.

UPON CONSIDERATION WHEREOF AND FOR GOOD CAUSE SHOWN, the following is ADJUDGED, ORDERED, AND DECREED until further order of this Court:

1. That Plaintiff, Louise Barclay Davis, shall have temporary exclusive possession of the marital residence located at 40 Barclay Road, Newport News, Virginia no later than December 1, 1995 with Defendant moving out by November 20, 1995.

2. That both parties shall be prohibited from molesting, harassing or bothering the other.

Exhibit No. 6

3. That both parties shall be enjoined from concealing, transferring, selling or disposing of any assets without written agreement or Court order.

4. That an award of spousal support is reserved in this matter.

5. That a copy of this Order shall be served forthwith on the Defendant, Samuel Bunyan Davis, Jr.

*** the defendant was not present but was duly notified**

Enter this 17th day of November 1995.

/s/ Robert P. Frank
Judge

I ask for this:

/s/ Kenneth B. Murov p.q.
Kenneth B. Murov

(no appearance made p.d.

66611

JONES, BLECHMAN, WOLTZ & kELLY, P.C.
600 Thimble Shoals Boulevard
Newport News, Virginia 23612-2888

HISTORY COMPLAINT INQUIRY CAD8RIF5

COMPLAINT: P951208331
LOC:A 40 BARCLAY RD APT: DCODES: DM ST FRI:2
INFRG:X JOC:JR: INVRT: ON8GH: DIST:C1 DIST:B
SEE-CT: Y LICENSE:
VICTIM: ADDRESS: PH:
RPT-BY: LOUISE DAVIS: ADDRESS: PH: 930-3047
REMARKS: ESTRANGED HUSBAND TRES INSIDE
RESD REFUSING TO LEAVE...COMP IS ELDERLY
FEMALE, WILL STBY OUTSIDE

RCVD: 1638 MT: 0502 RO: 0732 RA: 045 DOW: 6

--------UNIT INFORMATION--------

UNIT	DPCH	ARVD	CLRD	--COMP#--
22C1	1645	1700	1850	0276 0000
32C2	1645	1700	1749	0224 0000
02C1	1717	1717	1825	0378 0000
0197	1644	1655	1733	0133 0000
9759	1701	1714	1749	0759 0000

Officers that responded to 40 Barclay Road
December 8, 1996 police Incident #P951208331:

Unit#	Comp#	Name of Officer
22C1	0276	Ira G. Neal, III
32C2	0224	Michael E. Horton
02C1	0378	Jack W. Yundt
0197	0133	Carolyn Phillips
0759	0759	Marc C. Fogleman

Exhibit No. 7

MPI
NED MASSEY 111 PRIVATE INVESTIGATOR
1328 EAST PEMBROKE AVENUE
HAMPTON, VIRGINIA 23669

PROOF OF SERVICE

VIRGINIA SPECIAL PROCESS SERVER

Newport News Circuit Court-Chancery

CASE NO: 700CH9527095F-02
SERVICE NO: 006

Louise Barclay Davis vs., Samuel Bunyan Davis, Jr.
No address

Service on: Samuel Bunyan Davis, Jr.
437 Winterhaven Drive
Newoort News, Virginia 23606

I Ned Massey III am over the age of eighteen (18) years and not a party or otherwise interested in the subject matter in controversy in the action styled Louise Barclay Davis vs. Samuel Bunyan Davis, Jr. in the Circuit Court for the city of Newport Nev ., Virginia.

On Tuesday 7 May 1996 I, Ned Massey III, did post, Notice of Pendente Lite Hearing, Supplemental Notice of Hearing, dated 02 May 1996, Subpoena In Chancery, Bill of Complaint filed 25 July 1995. Posting took place at 11:49 a.m. and Samuel Bunyan was observed with video

Exhibit No. 8

claiming the aforementioned at 11:51 a.m. 7 May 1996. Video maintained for review upon request.

/s/ Ned Massey III .
Ned Massey III
Special Process Server

State of Virginia
City of Hampton, to wit:

subscribed and sworn to and acknowledged before me this 8 day of May 1996 by Ned Massey III.

/s/ signature unreadable .
Notary
My commission expores: 7/31/99

Office of Discreet Inquiry
1328 East Pembroke Avenue
Hampton, Virginia 23669
Business License 11-1722

MPI

PROOF OF SERVICE

STYLE, Davis v Davis , CASE #, 27095 ,
VIRGINIA:IN THE CIRCUIT COURT FOR THE
CITY OF NEWPORT NEWS
SERVED: SAMUEL BUNYAN DAVIS, JR.
437 WINTERHAVEN DRIVE
NEWPORT NEWS, VA 23606

is the name and address of the person upon whom service of the following is to be made

( ) Notice of Motion for Judgment and
Motion for Judgment
( ) Subpoena in Chancery and
Bill of Complaint
( ) **,Notice and Motion for Relief ,**

I am a private process server. I am over the age of eighteen years and not a party to or otherwise interested in the subject matter in controversy in this case. I served, as shown below, the above-named person upon whom services of process was to be made with copies described above

Exhibit No. 9

Date and time of service. **18 Sept 1998 5:05 pm** .

Place of service. **Riverside Hosp Rm# 439**

Newport News, Va.

Method of service. **xxx** . Other. _____ .

. 21 Sept 1998 . **/s/ Ned Massey III** .

Date Signature Ned Massey III

NOTARY

Name (Type or Print). **Stephanie M. Cain** .

State of Virginia City County of. **Hampton** .

Subscribed and sworn to affirmed bdfore me

this date by. **Ned Massey III** .

. 21 Sept 1998 . **/s/ Stephanie M. Cain** .

Date Signature Stephanie M. Cain

My commission expires. **31 Jan 2002** .

VIRGINIA: IN THE CIRCUIT COURT
FOR THE CITY OF NEWPORT NEWS

LOUISE BARCLAY DAVIS,
and the Estate of Gladys Louise Barclay,
successor in interest
Plaintiff

v. IN CHANCERY
NO.27095

SAMUEL BUNYAN DAVIS, JR.
Defendant

MOTION TO QUASH MOTION FOR RELIEF

NOW COMES, Samuel Bunyan Davis, Jr. and moves the court to Quash the Motion for Relief for the following reasons:

1. That the matters contained in the Motion are on appeal to the United States Supreme Court.
2. Patricia W. Fromal has recently, October 2, 1998 been appointed Co-trustee of Virginia Real Estate Trust and request time to become acquainted with the nature of the action and acquire representation.
2. All matters pertaining to Samuel Bunyan Davis, Jr. should be continued until Samuel Bunyan Davis, Jr. Is released from doctors care. Whereby Samuel Bunyan Davis, Jr. Is undergoing recovery from surgery, pneumonia and currently hospitalized.

Filed
10/5/97
No appearance . Samuel Bunyan Davis, Jr. .
no Drs certificate Samuel Bunyan Davis, Jr.
nothing to cause continuance
other than mere allegation **Exhibit No. 10**

BEST AVAILABLE COPY

VIRGINIA: IN THE CIRCUIT COURT
FOR THE CITY OF NEWPORT NEWS

GLADYS LOUISE BARCLAY,
and the Estate of Gladys Louise Barclay,
successor in interest
Plaintiff

v. In Chancery No. 27096

SAMUEL BUNYAN DAVIS, JR.
Defendant

ORDER

THIS CAUSE came the 5th day of October 1998 upon Plaintiff's notice and motion for relief, personal service of said notice upon Defendant, Plaintiff's counsel present, the evidence heard ore tenus and was argued by counsel for Plaintiff.

IT APPEARING to the Court, as follows:

1. That Louise Barclay Davis died on November 14, 1997 after assuming her maiden name of Gladys Louise Barclay in the Final Decree of Divorce.

2. That Gladys Louise Barclay having died intestate, Kenneth B. Murov and John Churchill qualified in the Circuit Court of the City of Newport News as Co-Administrators of her estate.

Exhibit No. 11

UPON CONSIDERATION WHEREOF and for good cause shown, the following is ADJUDGED, ORDERED and DECREED

1. That Kenneth B. Murov and John Churchill as Co-Administrators of the Estate of Gladys Louise Barclay, successor in interest to Louise Barclay Davis, are hereby substituted as Plaintiffs in this cause.

2. That Plaintiffs' and Defendant's interest in the assets of the Virginia Real Estate Trust having previously been determined to be 50/50, Plaintiffs shall be entitled to 50% of the $8,710.83 held by the Clerk of the Circuit Court of the City of Hampton, but it is Ordered that the entire sum of $8,710.83 shall be disbursed to Kenneth B. Murov and John Churchill as Administrators of the Estate of Gladys Louise Barclay as set forth in the Accounting approved in paragraph five hereinbelow.

3. That Plaintiffs' request for attorney fees having been granted by the November 18, 1997 order of the Court of Appeals of Virginia in this cause, Plaintiffs are awarded attorney fees from Defendant in the amount of $672.00.

4. That Kenneth B. Murov is appointed special Commissioner and/or Trustee to convey all right, title and interest in and to the right of way adjacent to that real estate located at 40 Ba clay Road, Newport News, Virginia, formerly owned by Louise Barclay Davis. This provisions (sic) shall be effective shall be effective nunc pro tuncto the entry of the final decree in this cause, April 10, 1997.

5. That the Accounting attached hereto as Exhibit A is hereby approved, and to satisfy the liabilities owed by Defendant, Kenneth B. Murov and John Churchill as Administrators of the Estate of Gladys Louise Barclay shall have the authority, power, and right to receive the assets set forth on Exhibit A to the extent said assets are required to satisfy Defendar.'s obligations set forth on Exhibit A. Co-Administrators Murov and Churchill shall also be entitled to receive from Defendant's share of any proceeds from the sale of 628 Lee Street, Hampton, Virginia, 515 Homestead Avenue, Hampton, Virginia, 10368 Warwick Boulevard, Newport News, Virginia, and any interest of Defendant in the assets of the Virginia Real Estate Trust, such monies as may be required to satisfy obligations Defendant owes to Plaintiffs included but not limited to storage fees fees incurred by Plaintiffs for Defendant's personal property and similiar expenses. Plaintiffs shall provide written notice to Defendant of the deduction of such expenses from Defendant's share of the aforesaid proceeds and/or assets.

6. in that the final decree of divorce allocated personal property and household furnishings between the parties and in that Defendant has refused to retrieve his personal property notwithstanding written notice to him from Plaintiffs, Plaintiffs shall have the authority to advise Defendant in writing that unless he retrieves his personal property from the storage facility where it is currently store (sic),Plaintiffs shall be entitled to deliver said property to Defendant's residence provided Plaintiffs provide Defendant with written notice of the time such property shall be delivered. Plaintiffs shall be relieved of any responsibility for the aforesaid property property provided Plaintiffs comply with the provisions of this order.

7. That consistent with the final decree in thiscause appointing Kenneth B. Murov as Special Commissioner

and/or Trustee to convey the property located at 628 Lee Street, Hampton, Virginia and 10368 Warwick Boulevard, Newport News,the execution by Kenneth B. Murov of contracts to sell the aforesaid property are hereby approved and ratified. Said contracts are attached hereto as Exhibits B and C.

In addition, Kenneth B. Murov is authorized to execute and deliver the deeds to the aforesaid property. Such deeds are attached hereto as Exhibits D and E.

8. That due to the necessity of bringing this cause, Plaintiffs are awarded attorney fees from Defendant in the amount of . $500.00 . and fees to be satisfied out of Defendant's share of the assets enumerated in paragraph five hereinabove.

9. This cause shall remain on the docket for such action as this cause may require including the ratification and approval of a contract of sale for 515 Homestead Avenue, Hampton, Virginia, and authorization and for execution and delivery of the aforesaid property.

Entered this . 7th . day of . November . 1998

/s/ James C. Godwin .
Judge

I ASK FOR THIS:

/s/ Kenneth B. Murov .p.q.
Kenneth B. Murov, Esq.
JONES, BLECHMAN, WOLTZ & KELLY,P.C.
600 Thimble Shoals Boulevard
P. O. Box 12888
Newport News, Virginia 23612

Telephone (757) 873-8049

HAVE SEEN:

NO APPEARANCE BY DEFENDANT .p.q.

Jones, Blechman, Woltz & Kelly, P.C.
Attorneys and Counselors at Law
600 Thimble Shoals Boulevard
Newport News, Virginia

January 26, 1999

R
Call Murov
shouldnt the
designated Judge
deal w/ this.

Called 2/4/98
& left
message on
recorder

Mr. Rex A. Davis, Clerk
Newport News Circuit Court
2500 Washington Avenue
Newport News, Virginia 23607-1307

Re: Davis v. Davis
Chancery No. 27095

Dear Mr. Davis:

Enclosed please find my firm's check in the amount of $19.00 which represents the amount necessary to reinstate this matter. I have also enclosed an Order, which I would appreciate your presenting to the Judge for entry in the above referenced matter. Please forward a certified copy of the Order to me upon entry. If you should have any questions, please do not hesitate to contact me.

With best personal regards, I remain

Very truly yours,

Kenneth B. Murov

KBM/lrc
Enclosure

Exhibit No. 12

VIRGINIA: IN THE CIRCUIT COURT
FOR THE CITY OF NEWPORT NEWS

LOUISE BARCLAY DAVIS,
and the Estate of Gladys Louise Barclay,
successor in interest

Plaintiff

v. Chancery No. 27095

SAMUEL BUNYAN DAVIS, JR.

Defendant

Serve: James C. Godwin, Judge Designate
708 North Broad Street
Suffolk, Virginia 23434

PETITION FOR WRIT OF PROHIBITION

Now comes the Defendant, Samuel Bunyan Davis, Jr. pro se and moves the Court for a Writ of Prohibition directed to the Honorable James C. Godwin prohibiting him from holding a hearing on the NOTICE AND MOTION in the above styled suit scheduled for December 3, 1999 at 2:00 p.m. and says as follows:

1. That a final decree in the above styled cause was signed by the Honorable James C. Godwin and entered on April 10, 1997 and contains the following language:

"Nothing further remaining to be done in this matter, it is ORDERED stricken

Exhibit No. 13

from the docket and filed among the ended causes.

2. Plaintiff alleges the non-disclosure of Defendant's interest in certain sums in Simmons v. Davis Chancery No. 19129RW now pending in this Court.

3. Defendant filed an answer to a Subpoena Duces Tecum in which the funds in Simmons v. Davis are specifically identified which was sworn and subscribed to. An original was sent to Mr. Kenneth Murov and a copy filed with the court on December 4, 1996. A copy of the certified copy filed with the court is attached hereto. (Exhibit No. 1) In addition to the answer to the Subpoena Duces Tecum, plaintiff had full knowledge of the pending suit, *Simmons v. Davis* and make no claim that the funds were or had ever been marital property. On January 31, 1997 defendant filed an objection to the Commissioner in Chancery report, which was filed with the Court and mailed to Mr. Kenneth Murov, Counsel for the Plaintiff at 600 Thimble Shoals Boulevard, P. O. Box 12888, Newport News, Virginia 23612-2888, which is his address of record with the Virginia State Bar and such objection states:

....3. The report of the Commissioner does not address the approximately $75,000 held by this court in a suit styled McKinley Simmons v. S. B. Davis, Jr. (See Exhibit No. 2)

4. Rule 1.1 of the rules of the Supreme Court states as follows:

"All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the

control of the trial court and subject to be modified, vacated, or suspended for twenty-one daysasfter the date of entry, and no longer.....The date of entry shall be the date the judgment, order, or decree is signed by the judge."

5. Defendant maintains that the only way a suit may be reopened is when fraud has been committed as allowed by the Code of Virginia @ 8.01-428, which is inapplicable to the defendant in this case.

6. A copy of this petition is whereby being forwarded to the Supreme Co .rt of the United States as an exhibit to an application for a Writ of Certiorari now pending before said Court involving the penetration of the Virginia Real Estate Trust as identified in the OBJECTION TO REPORT FILED jANUARY 31, 1997. (sEE EXHIBIT nO. 2)

WHEREFORE this defendant prays that a Writ of Prohibition be issued against the Honorable James C. Godwin.

Respectfully submitted,

Samuel Bunyan Davis, Jr.

Samuel Bunyan Davis, Jr. pro se
437 Winterhave . Drive
Newport News, Virginia 23606
(757) 930-8733

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of November, 1999 I deposited a copy of the foregoing Petition in the U.S. Mail to Kenneth B. Murov P. O. Box 12888 Newport News, Virginia 23612-2888.

_____
Samuel Bunyan Davis, Jr.

STATE OF VIRGINIA

I hereby certify that on the ____ day of December, 1999 personally appeared before me _____Notary Public Samuel Bunyan Davis, Jr. who being first duly sworn, stated that all information in the foregoing Petition is true and accurate to the best of his knowledge and belief.

_____
Notary Public

Mr. commission expires_____

VIRGINIA: IN THE CIRCUIT COURT
FOR THE CITY OF NEWPORT NEWS

LOUISE BARCLAY DAVIS,
and the Estate of Gladys Louise Barclay,
successor in interest

Plaintiff

v. Chancery No. 27095

SAMUEL BUNYAN DAVIS, JR.

Defendant

PETITION FOR WRIT OF PROHIBITION

Now comes the Defendant, Samuel Bunyan Davis, Jr. pro se and moves the Supreme Court of Virginia for a Writ of Prohibition directed to the Honorable James C. Godwin, prohibiting him from entering an order on a hearing held on December 3, 1999 on the above styled case and says as follows:

1. That a final decree in the above styled cause was signed by the Honorable James C. Godwin and entered on April 10, 1997 and contains the following language:

"Nothing further remaining to be done in this matter, it is ORDERED stricken

Exhibit No. 14

from the docket and filed among the ended causes."

2. Rule 1.1 of the Rules of the Supreme Court states as follows:

"All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one daysasfter the date of entry, and no longer.....The date of entry shall be the date the judgment, order, or decree is signed by the judge."

3. Defendant maintains that the only way a suit may be reopened is when fraud has been committed as allowed by the Code of Virginia @ 8.01-428, which is inapplicable to the defendant in this case.

4. That a timely objection to the holding of the hearing was made to the Honorable Rex A. Davis, Clerk of Court on the grounds that Judge Godwin's appointment expired twenty-one days after entry of the FINAL DECREE OF DIVORCE (Exhibit No. 1).

5. That a timely objection to the holding of the hearing was made to the Honorable James C. Godwin on the grounds that his appointment expired twenty-one days after entry of the FINAL DECREE OF DIVORCE.

6. A copy of this petition is being forwarded to the Supreme Court of the United States as an exhibit to an application for a Writ of Certiorari.

WHEREFORE this defendant prays that a Writ of Prohibition be issued against the Honorable James C. Godwin.

Respectfully submitted,

Samuel Bunyan Davis, Jr.

Samuel Bunyan Davis, Jr. pro se
437 Winterhaven Drive
Newport News, Virginia 23606
(757) 930-8733

CERTIFICATE OF SERVICE

I hereby certify that on ____ day of December, 1999 I deposited a copy of the foregoing Petition in the U. S. Mail to Kenneth B. Murov P. O. Box 12888 Newport News, Virginia, 23612-2888, and a copy of the foregoing Petition to the Hon. James C. Godwin at (1) 708 North Broad Street, Suffolk, Virginia 23434 and (2) 1 Long Point Lane, Suffolk, Virginia 23434.

By:_____
Samuel Bunyan Davis, Jr.

STATE OF VIRGINIA

I hereby certify that on the ___ day of December, 1999 personally appeared before me, _____ Notary Public Samuel Bunyan Davis, Jr., who being first duly sworn stated that all informationation in the foregoing Petition is true and accurate to the best of his knowledge and belief.

_____
Notary Public

My commission expires: _____

VIRGINIA: IN THE CIRCUIT COURT
FOR THE CITY OF NEWPORT NEWS

LOUISE BARCLAY DAVIS
now the ESTATE OF GLADYS LOUISE BARCLAY
successor in interest

Plaintiff

v. CHANCERY NO.: 27095-rf

SAMUEL BUNYAN DAVIS, JR.
Defendant

ORDER

THIS CAUSE came the 3rd day of December, 1999 upon Plaintiff's notice and motion to classify $96,959.17 and other property held by the Clerk of the Circuit Court of the City of Newport News as marital property and then equitably divide said property by allocating 50% of the aforesaid cash and other property to Plaintiff , personal service of Defendant, Defendant's motion to disqualify the Honorable James C. Godwin, Defendant's motion to disqualify counsel for Plaintiff, Defendant present and appearing pro-se, Plaintiff's counsel present, the evidence heard ore tenus, and was argued by counsel for Plaintiff and by Defendant individually.

It Appearing to the Court that the following facts have been established:

1. That $96,959.17 is being held by the Clerk of the Circuit Court of the City of Newport News in Chancery #19129-RW.

Exhibit No. 15

2. That the aforesaid money and other property thatis the subject matter of Chancery #19129-RW accrued before the separation of Plaintiff and Defendant on June 22, 1995.

3. That prior to the hearing the Defendant has made no appearance a any hearings including the Commissioner's hearing and the hearing to enter the final decree in this cause.

4. That Defendant failed to answer the Interrogatives propounded in this cause and failed to comply with the Request for Production, and therefore failed to identify the $96,959.17 and other property in Chancery #19129-RW as marital property in the divorce suit thereby denying Plaintiff an opportunity to seek to classify said property as marital property and to seek equitable distribution of said property.

5. That the Commissioner's Report was ratified, comfirmed, and approved in all respects in the final decree of divorce, and specifically required Defendant on page 8 to provide an accounting of certain assets so that the same could be valued for purposes of equitable distribution, and Defendant heretofore has not complied with this requirement.

UPON CONSIDERATION WHEREOF and for good cause shown, the following is ADJUDGED, ORDERED, AND DECREED:

A. The $96,959.17 held by the Clerk of the Circuit Court of the City of Newport News in Chancery #19129-RW is classified as marital property arising out of the marriage of Plaintiff and Defendant, said property is

subject to equitable distribution pursuant to Virginia Code Section 20-107.3 and the Court having considered the statutory factors set forth in Virginia Code Section 107.3E as noted in the Commissioner's Report herein, the Clerk of the Circuit Court of the City of Newport News shall disburse said money as follows: to the Estate of Gladys Louise Barclay the cash amount of $48,479.58, and to Defendant Samuel B. Davis, Jr. the cash amount of 48,479.59.

B. That any other property not yet liquidated in Chancery #19129-RW is also classified as marital property arising out of the marriage of Plaintiff and Defendant, said property is subject to equitable distribution pursuant to Virginia Code Section 20-107-3 as noted in the Commissioner's report herein, any other property in Chancery #19129-RW not yet liquidated shall be divided equally between Plaintiff and Defendant.

C. Plaintiff's request for attorney fees and costs is denied.

D. Defendant's motion to disqualify the Honorable James C. Godwin is denied.

E. Defendant's motion to disqualify counsel for Plaintiff is denied,

ENTERED this . 6th . day of . January . 2000.

. James C. Godwin .

I ask for this:

. Kenneth B. Murov . p.q.
Kenneth B. Murov, Esquire
JONES, BLECHMAN, WOLTZ & kELLY, P.C.
600 Thimble Shoals Boulevard
Newport News, Virginia 23606
Telephone: (757) 873-8048
Facsimile: (757) 873-8103

Have Seen:

_____p.q.
Samuel B. Davis, Jr.
Pro se
437 Winterhaven Drive
Newport News, VA 23606

192615.1

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

June 12, 2001

Mr. Samuel B. Davis, Jr.
437 Winterhaven Drive
Newport News, VA 23606

Re: Samuel Bunyan Davis, Jr.
v. Louise Barclay Davis, etc.
No. 00-1825

Dear Mr. Davis:

The petition for a writ of certiorari in the above entitled case was filed June 4, 2001 and placed on the docket June 8, 2001 as No. 00-1825.

Forms are enclosed for notifying opposing that the case was docketed.

Sincerely,

William K. Suter, Clerk

by **/s/ Melissa A. Blalock**

Melissa A. Blalock
Assistant

Exhibit No. 16

Clerk of the Circuit Court

2500 Washington Avenue
Newport News, Virginia 23607-4307

REX A. DAVIS
Clerk

Phone (757) 926-8561
Fax (757) 926-8531

July 16, 2001

Samuel B. Davis, Jr.
437 winterhaven Drive
Newport News, VA 23606

Dear Mr. Davis:

Mr. Murov filed the Motion for Relief on April 30, 2001. Your Order to Reinstate was filed on June 26, 2001.

Judge Godwin was appointed on July 12, 2001 to act as substitute in this matter, and this office received that notification today from the Supreme Court of Virginia.

Accordingly your Order to Reinstate has been sent to Judge Godwin for his perusal. Upon entry of same a certified copy will be forwarded to both you and Mr. Murov.

Very respectfully,
Rex A. Davis, Clerk

/s/ Patricia H. Alston

Patricia H. Alston
Deputy Clerk

Exhibit No. 17